IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7349 of 2007()

CRIME NO. 607 OF 2007 OF SASTHAMCOTTA POLICE STATION

PETITIONERS/ACCUSED

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1. KALESH, KAVINTE THEKKATHIL, KOVOOR, MYNAGAPPALLY.

2. RATHEESH, SARASWATHY BHAVANAM, KOVOOR, MYNAGAPPALLY.

3. SUDHEESH, SARASWATHY BHAVANAM, KOVOOR, MYNAGAPPALLY.

4. ABHILASH, KAVINTE THEKKATHIL, KOVOOR, MYNAGAPPALLY.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR, SASTHAMCOTTA POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7349 of 2007

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Dated this the 30th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1, 5, 3 and 4 respectively in a crime registered for offences punishable, inter alia, under Sections 452, 324 and 427 r/w. 149 I.P.C. Altogether there are five accused persons. The alleged incident took place on 1.11.2007. That was a day of harthal in Kerala.

2. The crux of the allegations against the petitioners is that there was an earlier dispute between the accused persons on the one side and a motor cycle rider on the other. The defacto complainant and his brother intervened in the said dispute. Actuated by animosity on that score, the accused allegedly armed with dangerous weapons are alleged to have trespassed into the house of the defacto complainant later on that night. They indulged in wanton acts of mischief. Damage was caused to the house. Injuries were caused to the defacto complainant.

Dangerous weapons were used for the commission of the offences. Crime has been registered. All the accused have been named in the F.I.R. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that really the incident did not take place in the manner alleged by the prosecution. Exaggerated and false allegations are raised. Allegation under Section 452 I.P.C. is not justified. That is the only non-bailable offence alleged. A lenient view may be taken and the petitioners may be granted anticipatory bail, prays the learned counsel.

4. The learned Prosecutor opposes the application. He submits that all the available indications suggest the complicity of the petitioners. There is no merit in the contention that on the face of it and on broad probabilities allegation under Section 452 I.P.C. is not justified. The learned Prosecutor has drawn my attention to the scene mahazar in the case diary, which shows that damage was caused to the building. The allegation clearly shows that there was entry into the house and the overt acts were committed inside the house. The learned

counsel for the petitioners relies on interse incongruities and contradictions in the case of the prosecution.

5. I have considered all the relevant inputs. In the totality of facts and circumstances of the case, I agree with the learned Prosecutor that there are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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